

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3451 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

ASHOKBHAI MAGANLAL DOSHI

Versus

DEPUTY SECRETARY

Appearance:

Shri K.M. Patel, Advocate, for the Petitioner

Shri T.H. Sompura, Assistant Government Pleader,
for the Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 11/09/96

ORAL JUDGEMENT

The order passed by the Deputy Secretary, Revenue Department at Gandhinagar (respondent No.1 herein) on behalf of the State Government (respondent No.2 herein) on 13th January 1988 under sec. 34 of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) is under challenge in this petition under articles 226 and

227 of the Constitution of India. By his impugned order, respondent No.2 set aside the order passed by the Competent Authority at Jamnagar (respondent No.3 herein) on 30th January 1980 under sec. 8(4) of the Act and declared the holding of the land-holder to be in excess of the ceiling limit by 508 square meters.

2. The facts giving rise to this petition move in a narrow compass. The land-holder filed his declaration in the prescribed form under sec. 6(1) of the Act with respect to his holding within the urban agglomerations of Jamnagar and Bombay. That form was duly processed by respondent No. 3. After observing necessary formalities under sec. 8 of the Act, by his order passed on 30th January 1980 under sub-section (4) thereof, respondent No. 3 declared the holding of the land-holder not to be in excess of the ceiling limit. Its copy is at Annexure A to this petition. It appears to have come to the notice of the concerned officer of respondent No. 2. He appears to have found it not according to law. Its suo motu revision under sec. 34 of the Act was therefore contemplated. A show-cause notice thereupon came to be issued on 19th October 1983 calling upon the land-holder to show cause why the order at Annexure A to this petition should not be revised. Its copy is at Annexure C to this petition. It appears that the land-holder appeared through his power-of-attorney holder who is the petitioner before this Court. After hearing the petitioner, by the order passed by respondent No.1 on behalf of respondent No.2 on 13th January 1988 under sec. 34 of the Act, the order at Annexure A to this petition was set aside and the holding of the land-holder was declared to be surplus by 508 square meters. Its copy is at Annexure D to this petition. The petitioner has thereupon, on behalf of the aggrieved land-holder as his power-of-attorney holder, approached this Court by means of this petition under articles 226 and 227 of the Constitution of India for questioning its correctness.

3. As rightly submitted by learned Advocate Shri K.M. Patel for the petitioner, each building containing a dwelling unit with land and additional land appurtenant thereto would be entitled to be excluded from the holding of the land-holder in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 SC 1567 and in view of the ruling of this Court in the case of Jayaganri Gokaldas Bhavnagar and others v. State of Gujarat and another reported in 1994(1) Gujarat Current Decisions 871 and the ruling of this Court in the case of Rameshbhai Bakubhai Patel v. Competent Authority and

Deputy Collector, U.L.C. Ahmedabad and others reported in 1996(1) G.L.H. (U.J) 30. As transpiring from the impugned order at Annexure D to this petition, there were in all four separate buildings containing dwelling units. Their area has been specified in internal page 2 thereof. Each building housing a dwelling unit would obviously be entitled to a separate land and additional land appurtenant thereto in view of the aforesaid rulings of this Court. Dwelling units will be excluded from the holding of the land-holder in view of the aforesaid binding ruling of the Supreme Court. The total area to be excluded from the holding of the petitioner would therefore be 3265 square meters.

4. It appears that certain four buildings were under construction each admeasuring 58.52 square meters. Such buildings together with the land appurtenant thereto would be entitled to be excluded from the holding of the petitioner in view of the ruling of this Court in the case of Ramkrishna Industrial Co-operative Service Society v. U.L.C. Tribunal and Another reported in 1996(1) G.L.H. 995. Since they were non-residential units, they would not be entitled to any additional land appurtenant thereto. The total area to be excluded from the holding of the land-holder would thus come to 3265 square meters for residential buildings and units and about 585 square meters towards non-residential units. The total area to be excluded from the holding of the petitioner would thus come to 3850 square meters. The total holding of the land-holder consisted of three properties admeasuring 4358 square meters being a land situated at Jamnagar, 3205 square meters being a land together with a residential unit thereon in Bombay and 44.89 square meters being a residential flat in Bombay. The property admeasuring 3205 square meters has been exempted from the operation of the Act by the order passed on 19th August 1978 under sec. 20(1) of the Act as referred to in the order at Annexure A to this petition. That would leave the land-holder's holding to be 4402.89 square meters. After excluding therefrom the area of 3850 square meters, the holding of the land-holder would be 552.89 square meters. The ceiling limit for the urban agglomeration of Jamnagar is prescribed to be 2000 square meters under the Act. The land-holder's holding can therefore be said to be very much within the ceiling limit.

5. In view of my aforesaid discussion, I am of the opinion that the impugned order at Annexure D to this petition cannot be sustained in law. It has to be quashed and set aside.

6. In the result, this petition is accepted. The order passed by the Deputy Secretary, Revenue Department at Gandhinagar on behalf of the State Government on 13th January 1988 at Annexure D to this petition is quashed and set aside. Rule is accordingly made absolute with no order as to costs.
